

The unfair labor practice charge filed on April 17, 2006, alleges, inter alia: (1) SPEA and the Town entered into the current collective bargaining agreement between SPEA and Town of Smyrna on January 1, 2005; (2) the Agreement between the parties includes a provision in which the Town agrees to provide the same Cost of Living Adjustment for members of the Association as it does for other Town employees; (3) on or about December 19, 2005, the Council of the Town of Smyrna adopted by resolution a Town budget for fiscal year 2006, which included a \$1500.00 “adjustment to the pay scale for non-sworn employees”; (4) on December 20, 2005, the Association objected to the Council’s actions asserting the salary adjustment for all non-sworn employees amounted to a cost of living adjustment to which Association members were entitled pursuant to the collective bargaining agreement.

The Association further alleges that the Town’s refusal to award the \$1500.00 increase to Association members raises an issue concerning whether the \$1500.00 is a cost of living adjustment or an attempt by the Town to circumvent its contractual obligations with the Association under the collective bargaining agreement.

The Association alleges violations of 19 Del. C. Section 1607(a)(5), of the Act.

Respondent, Town of Smyrna, filed its Answer to the Petition for Declaratory Statement and Unfair Labor Practice Charge on May 5, 2006, denying material allegations of the charge, but admitting the Town adopted by resolution the Town budget

located within the State or any agency thereof, which (1) upon the affirmative legislative act of its common council or other governing body has elected to come within Chapter 13 of this title, (2) hereafter elects to come within this chapter, or (3) employs 25 or more full-time employees. For the purposes of paragraph (3) of this subsection, “employees” shall include each and every person employed by the public employer except: (A) any person elected by popular vote; and (B) any person appointed to serve on a board or commission.

for fiscal year 2006, which included a \$1500.00 “adjustment to the pay scale for non-sworn employees”.

Under New Matter, Respondent alleges: (1) the collective bargaining agreement provides a grievance process for the purpose of resolving matters involving interpretation and enforcement of the Agreement and that there shall be no additional collective bargaining terms or conditions as to matters discussed (or should have been discussed) during bargaining; (2) on December 20, 2005, the Association initiated the grievance process by providing notice to the Town of Smyrna Chief of Police and the procedure for handling a grievance (as outlined in the Agreement) was followed by the Town; and (3) on April 17, 2006, the Association requested, and the Town did not object, holding the grievance process in abeyance pending a decision of the PERB on the Association’s Petition for Declaratory Statement and Unfair Labor Practice Charge. The Town asserts that its decision to agree to hold the grievance process in abeyance does not constitute admission by the Town or Town Council that PERB had appropriate subject matter jurisdiction in this matter.

As for determining whether the \$1500.00 adjustment to the pay scale constitutes a COLA to which sworn employees are entitled, Respondent asserts that its personnel policy: (1) defines and outlines the criteria governing cost of living adjustments to employees, (2) mandates use of a regional Cost of Living Index prior to any recommendation to Town Council for a COLA, and (3) that a COLA be a percentage of an employee’s base wage. According to Respondent, the personnel policy provides for adjustments to employee wages on an annual basis as well as for comprehensive review

of the pay plan every five (5) years. Through the current CBA, Respondent sought to adjust the salary levels for uniformed employees in order to become competitive with other jurisdictions and intended to do the same for non-sworn employees. Consequently, on or about November 30, 2005, the Town's Joint Personnel and Finance Committee decided to adjust the pay scale for employees not covered by the CBA or other employment contract by \$1500.00 or 2% as interim step toward achieving parity in pay levels for non-sworn employees. The Town alleges the \$1500.00 was merely an adjustment to the pay scale and not a percentage-based COLA, and that no COLA increases were presented to Town Council.

On or about May 15, 2006, Petitioner filed its Answer to Respondent's New Matter requesting the PERB dismiss the New Matter for failure to provide support to the Affirmative Defenses raised.

APPLICABLE STATUTORY PROVISIONS

19 Del.C. Section 1607, Unfair Labor Practices, provides in relevant part:

- (a) It is an unfair labor practice for a public employer or its designated representative to do any of the following:
 - (5) Refuse to bargain collectively in good faith with an employee representative which is the exclusive representative of employees in an appropriate unit.

DECISION

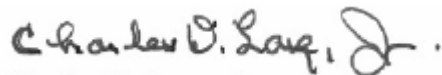
This Probable Cause Determination is based upon a review of SPEA's charge, the Town's Answer to the Charge and New Matter, and SPEA's Answer to the Town's New Matter. The petition alleges changes in the status quo of mandatory subjects of

bargaining, to wit, wages. Therefore, considered in a light most favorable to the Petitioner, the factual issues raised by the pleadings are sufficient to constitute probable cause to believe an unfair labor practice may have occurred. Specifically, the issue is whether the Town violated 19 Del.C. Section 1607(a)(5) when it failed to give sworn police officers below the rank of Lieutenant employed by the Town of Smyrna the same \$1500.00 salary adjustment awarded non-sworn employees.

A hearing will be promptly scheduled for the purpose of establishing a factual record upon which a decision in this matter can be rendered.

IT IS SO ORDERED.

DATED: 31 May 2006

A handwritten signature in dark ink, appearing to read "Charles D. Long, Jr.", is positioned above a horizontal line.

Charles D. Long, Jr.
Executive Director